

Minutes State Election Commission Meeting January 19, 2010

The State Election Commission meeting was called to order by Chairman Wallace at 11:15 a.m. with Commissioners Blackburn, DuBois, Duckett, Head, Wheeler and Younce present. Election staff members present were Mark Goins - Coordinator of Elections, Beth Henry-Robertson - Assistant Coordinator of Elections and Kathy Summers - Elections Specialist.

Motion was made, seconded and unanimously approved to adopt the minutes from October 20, 2009 and December 07, 2009 (telephonic meeting) meetings.

Pursuant to T.C.A. § 2-12-101 and 2-12-106, motion was made, seconded and unanimously approved to accept the nominations for county election commission appointments as submitted and to leave the nomination process open until 4:30 p.m. central time January 19, 2010. **(See attached New Appointment Status Report for appointments made.)**

Coordinator Goins - Update:

- ⇒ Coordinator Goins updated commission members on various voting machines seeking certification to the 2005 EAC standards.
- ⇒ Campbell County Election Commission has requested the State Election Commission to increase the minimum amount a county may charge for voter registration information.
- ⇒ Certification test was given on December 21, 2009. Only one Administrator sat for the test and passed.

A motion was made, seconded and unanimously approved to certify those individuals passing the certification exam that was given on December 21, 2009. (See attached memo labeled: Results of the December 21, 2009 Certification Exam.)

Commissioner Younce spoke of the Campbell County Election Commission request and indicated while he was a member of the County Election Commission the cost of printing voter information had increased for the county. After a lengthy discussion the State Election Commissioners requested the coordinator's office survey the counties and report back to the commission on their findings.

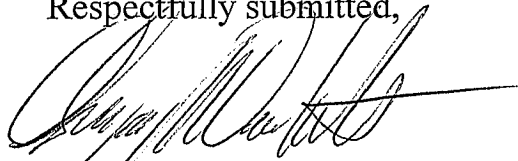
Beth Henry-Robertson, Assistant Coordinator of Elections, handed out information regarding qualifications and eligibility of county election commission members. (A copy of the material handed out is attached.)

Mark Ward, Administrator of Elections for Benton County, spoke to the commission on his findings since his appointment in April 2009.

The next meeting will be held on February 16, 2010 at 11:00 a.m. in the Robertson Room of the William R. Snodgrass-Tennessee Tower.

Motion was made to adjourn, and there being no further business to come before the commission at this time, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Greg Duckett', written over a horizontal line.

Greg Duckett, Secretary
State Election Commission

Vacant Status

19-Jan-10

Benton

D Greg Duckett
R Jimmy Wallace

R

Crockett

D Greg Duckett
R Jimmy Wallace

D

Dickson

D Greg Duckett
R Tom DuBois

D

Franklin

D Tommy Head
R Tom DuBois

R

Marshall

D Tommy Head
R Tom DuBois

R

Pickett

D Tommy Head
R Kent Younce

D

Total Vacancies: 6

New Appointment Status

26-Jan-10

		Appointment
Benton	D Greg Duckett / R Jimmy Wallace	
	R Jeff Beasley	1/19/2010
Dickson	D Greg Duckett / R Tom DuBois	
	D Robert E. Spencer	1/19/2010
Pickett	D Tommy Head / R Kent Younce	
	D Frank Capps	1/19/2010
Total New Commissioners: 3		



State of Tennessee
Department of State
Division of Elections
312 Eighth Avenue North
8th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
Phone: (615) 741-7956 Fax: (615) 741-1278

Memorandum

To: State Election Commission Members
From: Mark Goins, Coordinator of Elections *Mark Goins*
Date: December 21, 2009
Re.: Results of the December 21, 2009 Certification Exam

On December 21, 2009, this office administered a certification exam.

The following Administrator of Elections obtained a passing score on that exam:

Wanda Daniels (Clay County)



State of Tennessee
Department of State
Division of Elections
312 Rosa L. Parks Avenue
9th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
Phone: (615) 741-7956 Fax: (615) 741-1278

Basic Price List for Names of Registered Voters

(The prices herein reflect the uniform pricing system established by the Tennessee State Election Commission for the voter registration list of county voters.)

Computer Printouts

Two (2) cents per name for a straight name list

Three (3) cents per name for labels, if customer furnishes the labels

Three (3) cents per name plus the cost of the labels, if the county furnishes the labels

Computer Diskettes

\$35.00 set up fee for each run

Cost of the actual diskette

Administrative fee of \$1.50 per diskette to recover county administrative expenses.

Brian Younce, Chairman
Lucy Lobertini, Secretary
Jerry Chadwell, Member
Mark Hoskins, Member
Marshall McKamey, Member



Dean Sexton
Administrator of Elections

Carole Jo Nelson
Elections Deputy

CAMPBELL COUNTY ELECTION COMMISSION

Post Office Box 84 • 129 Church Alley
Jacksboro, Tennessee 37757
423-562-9777 • Fax 423-562-9758

November 30, 2009

Chairman Jimmy Wallace
Members State Election Commission
State Election Commission
312 Rosa L. Parks Avenue
9th Floor, William R. Snodgrass Tennessee Tower
Nashville, TN 37243

2009 DEC -7 PM 4:06

Dear Chairman Wallace and Commission Members:

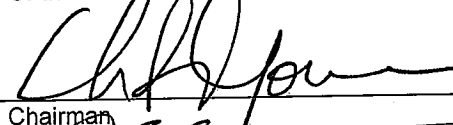
The Campbell County Election Commission met in regular session on November 3, 2009 with all members present. At said meeting, the members discussed the need to increase our price for our voter registration information which we provide on computer generated media. We have recently changed our voter registration software vendor, resulting in an annual increase of \$1,000.00 for this service. Our new software will provide a more user friendly list on a disk in a format that meets all minimum data standards.

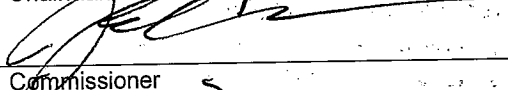
We feel that our cost of production has increased in an amount that justifies an increase of \$37.00 over the \$38.00 uniform cost established by the State Election Commission. Pursuant to T.C.A. § 2-2-138 (b), we respectfully petition the State Election Commission to grant the Campbell County Election Commission this increase of \$37.00, giving us the authority to charge \$75.00 to any purchaser who certifies on the form provided by the State Election Commission that such list will be used for political purposes.

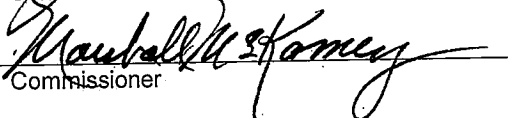
Thank you in advance for your consideration.

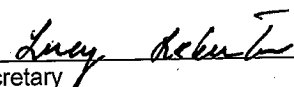
Yours truly,

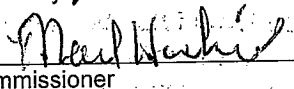
CAMPBELL COUNTY ELECTION COMMISSION


Chairman


Commissioner


Commissioner


Secretary


Commissioner


Administrator of Elections

Benton County Election Commission

Mark Ward, Administrator of Elections
113 Maple Avenue
Camden, TN 38320
731-584-6144

December 22, 2009


The Honorable Jimmy Wallace
Tennessee Election Commission Chairman
312 Rosa L. Parks Avenue
9th Floor, Snodgrass Tower
Nashville, Tennessee 37243-1102

2009 DEC 22 11:00

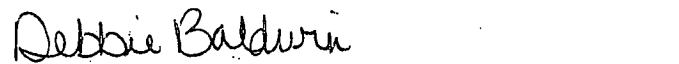
Dear Mr. Wallace:

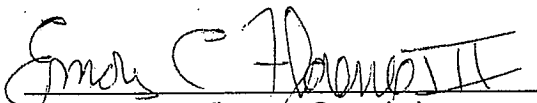
In our last meeting there were a number of issues that the election commission felt should be made a matter of record. We have included a description of these issues with this letter. We feel that it is our obligation to pass this information along to you and let you decide how it should be handled. Please contact us if we can be of any assistance.

Respectfully,


Britt Johnson, Chairman


Ronnie Pruiett, Secretary


Debbie Baldwin, Commissioner


Emory Florence, Commissioner


Mike Holladay, Commissioner

cc: The Honorable Hansel McCadams, District Attorney General
The Honorable Alan Ward, Benton County Attorney

Problems in Office Passed Down by Previous Administrations.

2009 FEB 23 11:03

Thirty-three felons were registered to vote.

Felons were not purged; some have voted. Felons were registered without providing evidence of restoration of voting rights. Some previous felons who registered provided evidence of restoration of voting rights to this office but the documents are not on file with the state. Only two or three whose voting rights were restored were handled correctly.

Time sheets were questionable and may have been falsified.

Voter registration files were not in order.

Tennessee state law requires that voter registration forms be filed alphabetically, in two groups: 1. active and inactive voters, and 2. purged voters. The files were not alphabetized. Most of the purged voter forms were not removed from the active and inactive group.

Signatures were not scanned into the computer on a large number of voters, making signature verification impossible.

The budget for 2009 was not prepared.

17 voters were changed to inactive status without proper documentation.

We are required send two address verification cards and a forwardable confirmation notice before placing a voter on inactive status. These mailings are to be kept as documentation and filed with the registration forms. We were unable to locate the notices so the inactive voters had to be returned to active status.

A large number of voters were updated without new applications. We have no documentation verifying their updated information.

Blakely Street and Florence Street were in the wrong districts.

There were no registrations or proof of ownership for property rights voters.

There was no standard for determining city voting eligibility.

Approximately one fourth of all applications were not filled out properly (about two to three thousand).

Voters who had mailings returned were not purged.

A disc was found in the 2008 voting records which contained an X-rated photograph.

Jimmy Wiseman was not required to appoint a treasurer.

Three absentee ballots were found in the office.

One was a punch card. It was in an opened envelope, postmarked October of 2004. It was lying on the administrator's desk. On this person's election history there was a record of a request for absentee ballot and a vote on 11-2-04. The other two belonged to a husband and wife who registered in 2007 and have no history of an absentee request or vote on their records. Both the ballots and the envelopes had been opened. They were postmarked October 31st 2008.

We have a copy of a letter written to Benton County resident Bill Nobles by Brook Thompson, Tennessee Coordinator of Elections, dated September 1st, 2006. This letter was written in response to a letter written by Mr. Nobles in which he asked about a vote being recorded on the record of Robert Berry in the May 7th, 2002 election. Mr. Berry was deceased at the time of the election. The letter from Brook Thompson said that Robert Berry had been accidentally credited with the vote, and that he had been purged prior to the election. We don't know the source of that information but it is false. According to our computer records, Mr. Berry was not purged until September 12th, 2005. We have included a copy of the letter with this document.

2009 DEC 28 17:11:03

Precinct Report — Unofficial

ELECTION HELD ON THURSDAY, AUGUST 3, 2006 — OFFICIAL BALLOT FOR BENTON COUNTY — August 03, 2006

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08/03/2006 10:26 PM

Precincts Reporting 6 of 6 = 100.00%

Total Number of Voters : 5,429 of 0 = 0.00%

Party	Candidate	Absentee	Early	Election	Total
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Precinct 1 (Ballots Cast: 864)

CIRCUIT COURT JUDGE 24th Judicial District - Part II, Vote For 1

DEM	Donald E. Parish (DEM)	2	100.00%	212	100.00%	213	100.00%	427	100.00%
Cast Votes:		2	22.22%	212	45.40%	213	54.90%	427	49.42%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		7	77.78%	255	54.60%	175	45.10%	437	50.58%

CHANCELLOR 24th Judicial District, Vote For 1

DEM	Ron E. Harmon (DEM)	3	100.00%	211	100.00%	226	100.00%	440	100.00%
Cast Votes:		3	33.33%	211	45.18%	226	58.25%	440	50.93%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		6	66.67%	256	54.82%	162	41.75%	424	49.07%

DISTRICT ATTORNEY GENERAL 24th Judicial District, Vote For 1

DEM	Hansel McCadams (DEM)	2	66.67%	271	72.46%	209	62.57%	482	67.79%
IND	John Overton (IND)	1	33.33%	103	27.54%	125	37.43%	229	32.21%
Cast Votes:		3	33.33%	374	80.09%	334	86.08%	711	82.29%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		6	66.67%	93	19.91%	54	13.92%	153	17.71%

PUBLIC DEFENDER 24th Judicial District, Vote For 1

DEM	Guy T. Wilkinson (DEM)	4	100.00%	312	100.00%	271	100.00%	587	100.00%
Cast Votes:		4	44.44%	312	66.81%	271	69.85%	587	67.94%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		5	55.56%	155	33.19%	117	30.15%	277	32.06%

COUNTY MAYOR, Vote For 1

DEM	Jimmy Wiseman (DEM)	4	57.14%	241	53.67%	226	59.79%	471	56.47%
REP	Mark Ward (REP)	0	0.00%	104	23.16%	83	21.96%	187	22.42%
IND	Henry Wayne Berry (IND)	3	42.86%	102	22.72%	69	18.25%	174	20.86%
IND	Mel Rodocker (IND)	0	0.00%	2	0.45%	0	0.00%	2	0.24%
Cast Votes:		7	77.78%	449	96.15%	378	97.42%	834	96.53%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		2	22.22%	18	3.85%	10	2.58%	30	3.47%

COUNTY COMMISSIONER 1st District, Vote For 3

COUNT 1: COMMISSIONER 1st District, Vote For 3									
Vickie Howe	4	26.67%	237	23.08%	252	27.48%	493	25.17%	
Billy G. Mallin	2	13.33%	163	15.87%	160	17.45%	325	16.59%	
Don Allon Patton	3	20.00%	225	21.91%	147	16.03%	375	19.14%	
Stephen Lynn Stokes	3	20.00%	234	22.78%	239	26.06%	476	24.30%	
Janet Wooden	3	20.00%	168	16.36%	119	12.98%	290	14.80%	
Cast Votes:	15	55.56%	1,027	73.30%	917	78.78%	1,959	75.58%	
Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%	
Under Votes:	12	44.44%	374	26.70%	247	21.22%	633	24.42%	

Precinct Report — Unofficial

ELECTION HELD ON THURSDAY, AUGUST 3, 2006 — OFFICIAL BALLOT FOR BENTON COUNTY — August 3, 2006

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08/03/2006 10:26 PM
Precincts Reporting 6 of 6 = 100.00%

Total Number of Voters : 5,429 of 0 = 0.00%

Party	Candidate	Absentee	Early	Election	Total
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Precinct 2 (Ballots Cast: 946)

CIRCUIT COURT JUDGE 24th Judicial District - Part II, Vote For 1

DEM	Donald E. Parish (DEM)	6	100.00%	272	100.00%	206	100.00%	484	100.00%
	Cast Votes:	6	40.00%	272	52.31%	206	50.12%	484	51.16%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	9	60.00%	248	47.69%	205	49.88%	462	48.84%

CHANCELLOR 24th Judicial District, Vote For 1

DEM	Ron E. Harmon (DEM)	8	100.00%	275	100.00%	211	100.00%	494	100.00%
	Cast Votes:	8	53.33%	275	52.88%	211	51.34%	494	52.22%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	7	46.67%	245	47.12%	200	48.66%	452	47.78%

DISTRICT ATTORNEY GENERAL 24th Judicial District, Vote For 1

DEM	Hansel McCadams (DEM)	10	76.92%	313	73.13%	208	66.67%	531	70.52%
IND	John Overton (IND)	3	23.08%	115	26.87%	104	33.33%	222	29.48%
	Cast Votes:	13	86.67%	428	82.31%	312	75.91%	753	79.60%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	2	13.33%	92	17.69%	99	24.09%	193	20.40%

PUBLIC DEFENDER 24th Judicial District, Vote For 1

DEM	Guy T. Wilkinson (DEM)	11	100.00%	385	100.00%	296	100.00%	692	100.00%
	Cast Votes:	11	73.33%	385	74.04%	296	72.02%	692	73.15%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	4	26.67%	135	25.96%	115	27.98%	254	26.85%

COUNTY MAYOR, Vote For 1

DEM	Jimmy Wiseman (DEM)	9	60.00%	230	45.28%	185	45.91%	424	45.79%
REP	Mark Ward (REP)	1	6.67%	185	36.42%	150	37.22%	336	36.29%
IND	Henry Wayne Berry (IND)	5	33.33%	90	17.72%	67	16.63%	162	17.49%
IND	Mel Rodocker (IND)	0	0.00%	3	0.59%	1	0.25%	4	0.43%
	Cast Votes:	15	100.00%	508	97.69%	403	98.05%	926	97.89%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	0	0.00%	12	2.31%	8	1.95%	20	2.11%

COUNTY COMMISSIONER 2nd District, Vote For 3

	William M. McDaniel	8	22.86%	260	22.53%	180	21.43%	448	22.08%
	William M. McDaniel, Jr.	6	17.14%	200	17.33%	148	17.62%	354	17.45%
	Randy Patton	4	11.43%	268	23.22%	193	22.98%	465	22.92%
	Sam Rainwaters	10	28.57%	293	25.39%	189	22.50%	492	24.25%
	Anita L. Tinker	7	20.00%	133	11.53%	130	15.48%	270	13.31%
	Cast Votes:	35	77.78%	1,154	73.97%	840	68.13%	2,029	71.49%
	Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	Under Votes:	10	22.22%	406	26.03%	393	31.87%	809	28.51%

Precinct Report — Unofficial

ELECTIC HELD ON THURSDAY, AUGUST 3, 2006 — OFFICIAL BALLOT FOR BENTON COUNTY — August 3, 2006

08/03/2006 10:26 PM
Precincts Reporting 6 of 6 = 100.00%

Total Number of Voters : 5,429 of 0 = 0.00%

Party	Candidate	Absentee	Early	Election	Total
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Precinct 3 (Ballots Cast: 907)

COUNTY COMMISSIONER 3rd District, Vote For 3

DEM	Bary Lee Barnett	11	18.03%	227	19.91%	139	21.62%	377	20.44%
	Artie Griffith	9	14.75%	138	12.11%	89	13.84%	236	12.80%
	Jo Jones	12	19.67%	248	21.75%	123	19.13%	383	20.77%
	Brenda Kyle	5	8.20%	59	5.18%	47	7.31%	111	6.02%
	Roger Gordon Pafford	15	24.59%	238	20.88%	120	18.66%	373	20.23%
	James Steven Travis	7	11.48%	109	9.56%	64	9.95%	180	9.76%
	Chris Wagner	2	3.28%	121	10.61%	61	9.49%	184	9.98%
Cast Votes:		61	65.59%	1,140	69.34%	643	65.35%	1,844	67.77%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		32	34.41%	504	30.66%	341	34.65%	877	32.23%

COUNTY TRUSTEE, Vote For 1

DEM	Sherry C. Beasley (DEM)	20	100.00%	453	100.00%	277	100.00%	750	100.00%
Cast Votes:		20	64.52%	453	82.66%	277	84.45%	750	82.69%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		11	35.48%	95	17.34%	51	15.55%	157	17.31%

GENERAL SESSIONS & JUVENILE JUDGE 24th Judicial District, Vote For 1

DEM	Ron Darby (DEM)	14	58.33%	288	58.78%	158	52.32%	460	56.37%
IND	Clyde W. Watson (IND)	10	41.67%	202	41.22%	144	47.68%	356	43.63%
Cast Votes:		24	77.42%	490	89.42%	302	92.07%	816	89.97%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		7	22.58%	58	10.58%	26	7.93%	91	10.03%

SHERIFF, Vote For 1

DEM	Tony King (DEM)	11	37.93%	214	39.85%	96	30.00%	321	36.23%
IND	Jimmy Blackmon (IND)	3	10.34%	25	4.66%	32	10.00%	60	6.77%
IND	Ronnie (Smiley) Stewart (IND)	7	24.14%	157	29.24%	129	40.31%	293	33.07%
IND	Gill Wright (IND)	6	20.69%	112	20.86%	48	15.00%	166	18.74%
IND	James Yeager (IND)	2	6.90%	29	5.40%	15	4.69%	46	5.19%
Cast Votes:		29	93.55%	537	97.99%	320	97.56%	886	97.68%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		2	6.45%	11	2.01%	8	2.44%	21	2.32%

CIRCUIT COURT CLERK, Vote For 1

DEM	Terry Hudson (DEM)	18	100.00%	418	100.00%	255	100.00%	691	100.00%
Cast Votes:		18	58.06%	418	76.28%	255	77.74%	691	76.19%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		13	41.94%	130	23.72%	73	22.26%	216	23.81%

Precinct Report — Unofficial

ELECTION HELD ON THURSDAY, AUGUST 3, 2006 — OFFICIAL BALLOT FOR BENTON COUNTY — August 3, 2006

08/03/2006 10:26 PM
Precincts Reporting 6 of 6 = 100.00%

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Total Number of Voters : 5,429 of 0 = 0.00%

Party	Candidate	Absentee	Early	Election	Total
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Precinct 4 (Ballots Cast: 914)

COUNTY COMMISSIONER 4th District, Vote For 3

	Eddie Griggs	5	22.73%	240	20.08%	125	15.80%	370	18.43%
	Charles (Sonny) Hall	2	9.09%	252	21.09%	159	20.10%	413	20.57%
	William (Butch) Haller	3	13.64%	132	11.05%	82	10.37%	217	10.81%
	Perry Hensley	6	27.27%	239	20.00%	167	21.11%	412	20.52%
	James Britt Johnson	4	18.18%	175	14.64%	147	18.58%	325	16.24%
	Bill Nobles	2	9.09%	157	13.14%	111	14.03%	270	13.45%
Cast Votes:		22	56.41%	1,195	76.46%	791	69.39%	2,008	73.23%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		17	43.59%	368	23.54%	349	30.61%	734	26.77%

COUNTY TRUSTEE, Vote For 1

DEM	Sherry C. Beasley (DEM)	11	100.00%	421	100.00%	316	100.00%	748	100.00%
Cast Votes:		11	84.62%	421	80.81%	316	83.16%	748	81.84%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		2	15.38%	100	19.19%	64	16.84%	166	18.16%

GENERAL SESSIONS & JUVENILE JUDGE 24th Judicial District, Vote For 1

DEM	Rob Darby (DEM)	4	30.77%	260	53.83%	191	53.65%	455	53.40%
IND	Clyde W. Watson (IND)	9	69.23%	223	46.17%	165	46.35%	397	46.60%
Cast Votes:		13	100.00%	483	92.71%	356	93.68%	852	93.22%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		0	0.00%	38	7.29%	24	6.32%	62	6.78%

SHERIFF, Vote For 1

DEM	Tony King (DEM)	3	23.08%	171	33.33%	118	31.98%	292	32.63%
IND	Jimmy Blackmon (IND)	1	7.69%	57	11.11%	75	20.33%	133	14.86%
IND	Ronnie (Smiley) Stewart (IND)	3	23.08%	133	25.93%	81	21.95%	217	24.25%
IND	Gill Wright (IND)	1	7.69%	112	21.83%	70	18.97%	183	20.45%
IND	James Yeager (IND)	5	38.46%	40	7.80%	25	6.78%	70	7.82%
Cast Votes:		13	100.00%	513	98.46%	369	97.11%	895	97.92%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		0	0.00%	8	1.54%	11	2.89%	19	2.08%

CIRCUIT COURT CLERK, Vote For 1

DEM	Terry Hudson (DEM)	10	100.00%	385	100.00%	289	100.00%	684	100.00%
Cast Votes:		10	76.92%	385	73.90%	289	76.05%	684	74.84%
Over Votes:		0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:		3	23.08%	136	26.10%	91	23.95%	230	25.16%

ELECTION HELD ON THURSDAY, AUGUST 3, 2006 — OFFICIAL BALLOT FOR BENTON COUNTY — August 3, 2006

08/03/2006 10:26 PM
Precincts Reporting 6 of 6 = 100.00%

Page 48 of 60

Total Number of Voters : 5,429 of 0 = 0.00%

Party	Candidate	Absentee	Early	Election	Total
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Precinct 5 (Ballots Cast: 915)

CIRCUIT COURT JUDGE 24th Judicial District - Part II, Vote For 1
DEM Donald E. Parish (DEM)

Cast Votes:	4	100.00%	253	100.00%	194	100.00%	451	100.00%
Over Votes:	4	33.33%	253	43.70%	194	59.88%	451	49.29%
Under Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	8	66.67%	326	56.30%	130	40.12%	464	50.71%

CHANCELLOR 24th Judicial District, Vote For 1
DEM Ron E. Harmon (DEM)

Cast Votes:	5	100.00%	280	100.00%	205	100.00%	490	100.00%
Over Votes:	5	41.67%	280	48.36%	205	63.27%	490	53.55%
Under Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	7	58.33%	299	51.64%	119	36.73%	425	46.45%

DISTRICT ATTORNEY GENERAL 24th Judicial District, Vote For 1
DEM Hansel McCadams (DEM)
IND John Overton (IND)

Cast Votes:	5	62.50%	335	74.44%	203	73.82%	543	74.08%
Over Votes:	3	37.50%	115	25.56%	72	26.18%	190	25.92%
Under Votes:	8	66.67%	450	77.72%	275	84.88%	733	80.11%
	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	4	33.33%	129	22.28%	49	15.12%	182	19.89%

PUBLIC DEFENDER 24th Judicial District, Vote For 1
DEM Guy T. Wilkinson (DEM)

Cast Votes:	6	100.00%	426	100.00%	258	100.00%	690	100.00%
Over Votes:	6	50.00%	426	73.58%	258	79.63%	690	75.41%
Under Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
	6	50.00%	153	26.42%	66	20.37%	225	24.59%

COUNTY MAYOR, Vote For 1
DEM Jimmy Wiseman (DEM)
REP Mark Ward (REP)
IND Henry Wayne Berry (IND)
IND Mel Rodocker (IND)

Cast Votes:	6	54.55%	297	53.51%	130	41.53%	433	49.26%
Over Votes:	5	45.45%	166	29.91%	138	44.09%	309	35.15%
Under Votes:	0	0.00%	89	16.04%	44	14.06%	133	15.13%
	0	0.00%	3	0.54%	1	0.32%	4	0.46%
	11	91.67%	555	95.85%	313	96.60%	879	96.07%
Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:	1	8.33%	24	4.15%	11	3.40%	36	3.93%

COUNTY COMMISSIONER 5th District, Vote For 3

Harold E. (Slim) Albritton
Lawrence Atkins
Randall W. Clark
Ronnie L. Pierce
John S. Smoot

Cast Votes:	1	4.00%	158	14.85%	112	17.75%	271	15.76%
Over Votes:	9	36.00%	236	22.18%	119	18.86%	364	21.16%
Under Votes:	5	20.00%	263	24.72%	160	25.36%	428	24.88%
	6	24.00%	241	22.65%	140	22.19%	387	22.50%
	4	16.00%	166	15.60%	100	15.85%	270	15.70%
	25	69.44%	1,064	61.26%	631	64.92%	1,720	62.66%
Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:	11	30.56%	673	38.74%	341	35.08%	1,025	37.34%

Precinct Report — Unofficial

ELECTION HELD ON THURSDAY, AUGUST 3, 2006 — OFFICIAL BALLOT FOR BENTON COUNTY — August 03, 2006

Total Number of Voters : 5,429 of 0 = 0.00% 08/03/2006 10:26 PM
 Precincts Reporting 6 of 6 = 100.00%

Party	Candidate	Absentee	Early	Election	Total
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Precinct 6 (Ballots Cast: 883)

COUNTY COMMISSIONER 6th District, Vote For 3

Bonnie S. Ament	4	12.50%	68	12.93%	152	12.58%	224	12.68%
Mary Benton	1	3.13%	56	10.65%	106	8.77%	163	9.23%
Vivian Mahan	5	15.63%	83	15.78%	169	13.99%	257	14.55%
Robert E. Pace	5	15.63%	98	18.63%	167	13.82%	270	15.29%
Robin Pierpoint	4	12.50%	92	17.49%	248	20.53%	344	19.48%
Larry L. Schoon	5	15.63%	46	8.75%	142	11.75%	193	10.93%
Mureleane (Mar) Steinbuck	8	25.00%	83	15.78%	224	18.54%	315	17.84%
Cast Votes:	32	96.97%	526	64.94%	1,208	66.89%	1,766	66.67%
Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:	1	3.03%	284	35.06%	598	33.11%	883	33.33%

COUNTY TRUSTEE, Vote For 1

DEM Sherry C. Beasley (DEM)	8	100.00%	198	100.00%	436	100.00%	642	100.00%
Cast Votes:	8	72.73%	198	73.33%	436	72.43%	642	72.71%
Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:	3	27.27%	72	26.67%	166	27.57%	241	27.29%

GENERAL SESSIONS & JUVENILE JUDGE 24th Judicial District, Vote For 1

DEM Ron Darby (DEM)	5	55.56%	158	66.11%	309	58.30%	472	60.67%
IND Clyde W. Watson (IND)	4	44.44%	81	33.89%	221	41.70%	306	39.33%
Cast Votes:	9	81.82%	239	88.52%	530	88.04%	778	88.11%
Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:	2	18.18%	31	11.48%	72	11.96%	105	11.89%

SHERIFF, Vote For 1

DEM Tony King (DEM)	2	18.18%	52	19.62%	62	10.47%	116	13.36%
IND Jimmy Blackmon (IND)	1	9.09%	7	2.64%	23	3.89%	31	3.57%
IND Ronnie (Smiley) Stewart (IND)	1	9.09%	46	17.36%	77	13.01%	124	14.29%
IND Gill Wright (IND)	4	36.36%	141	53.21%	398	67.23%	543	62.56%
IND James Yeager (IND)	3	27.27%	19	7.17%	32	5.41%	54	6.22%
Cast Votes:	11	100.00%	265	98.15%	592	98.34%	868	98.30%
Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:	0	0.00%	5	1.85%	10	1.66%	15	1.70%

CIRCUIT COURT CLERK, Vote For 1

DEM Terry Hudson (DEM)	8	100.00%	209	100.00%	474	100.00%	691	100.00%
Cast Votes:	8	72.73%	209	77.41%	474	78.74%	691	78.26%
Over Votes:	0	0.00%	0	0.00%	0	0.00%	0	0.00%
Under Votes:	3	27.27%	61	22.59%	128	21.26%	192	21.74%



State of Tennessee
Department of State
Division of Elections
312 Eighth Avenue North
9th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
Phone: (615) 741-7956 Fax: (615) 741-1278

September 1, 2006

Billy Nobles
132 Arnold Drive
Camden, Tennessee 38320

RE: August 3, 2006 Election

Mr. Nobles,

I received your letter dated August 15, 2006, and I have spoken with Diane Latimer, Administrator for Benton County. With respect to Robert Berry voting in 2002, Ms. Latimer reviewed the signature books for the August 2002 election. It appears that Mr. Robert Berry did not vote in the May 7, 2002, election but rather the voter below his name, Roy Berry, did vote. In entering the voter history information, Robert Berry was inadvertently credited for the vote. Robert Berry had been purged, prior to this election, from the Benton County voter registration list due to his death.

It is correct that four (4) candidates out of approximately ninety-four (94) candidates did receive two hundred and seventy (270) votes. However, none of the early voting, absentee or election day totals matched. Furthermore, all candidates were in different county commission races. If a candidate withdraws after the deadline, their name will appear on the ballot and the voter may still vote for that individual. It appears that the totals were a mere coincidence.

This ballot was the longest in state history due to the judicial retention questions and many state offices that are only on the ballot every eight years. This caused lines to form in many counties. Our office is aware that many individuals in several counties were in line after 7 pm and as late as 10 pm. We anticipate the November election to not have the challenges of this election.

Sincerely,

Brook Thompson
Coordinator of Elections

CC: Benton County Election Commission

2-2-122. Principles for determination of residence — Factors involved. —

(a) The determination of whether a person is a resident or where the person resides or has residence for purposes of the election code shall be made in the light of the following principles:

(1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return; provided, that a person may not register to vote using a business location as the registration address when the sole basis for the person's presence at such location is based on a business or commercial use;

(2) A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one (1) residence;

(3) A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention;

(4) A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state or place within this state for temporary purposes, even if of one or more years duration;

(5) The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides;

(6) A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented; however, a commercial address may not be used for residential purposes, unless the applicant provides evidence of such applicant's residential use of such address;

(7) A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation; and

(8) No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

(b) (1) The following factors, among other relevant matters, may be considered in the determination of where a person is a resident:

(A) The person's possession, acquisition or surrender of inhabitable property;

- (B) Location of the person's occupation;
- (C) Place of licensing or registration of the person's personal property;
- (D) Place of payment of taxes which are governed by residence;
- (E) Purpose of the person's presence in a particular place; and
- (F) Place of the person's licensing for activities such as driving.

(2) In determining the residency of a person involuntarily confined in a state institution, the mere anticipation of a future grant of living quarters in a specific half-way house shall not be sufficient to establish intent to reside in such half-way house following release from the institution.

(c) (1) Notwithstanding any other provision in this chapter to the contrary, whenever county boundary lines cross through a farm being operated as a single unit, leaving such farm in two (2) separate counties, persons residing on such farms may make a one-time election to register to vote in either county. The administrator of elections shall place a person who chooses to register in the county which adjoins the physical location of the person's residence in the precinct where the property in the adjoining county is located.

(2) For the purpose of this subsection (c), "farm" means a tract of land of at least fifteen (15) acres constituting a farm unit engaged in the production of growing crops, plants, animals, nursery or floral products. Such farm shall produce gross agricultural income averaging at least one thousand five hundred dollars (\$1,500) per year over a three-year period.

(d) (1) Notwithstanding any other provision in this chapter to the contrary, a person shall be eligible to register to vote in the county where the person pays property taxes on the person's primary residence even though the property is partially or totally located in another county, but the only access to the property is through the county where the person pays property taxes. Any person residing at such property shall make a one-time election to register to vote in either the county where the property taxes are paid or the county where the property is located.

(2) The county election commission may require the person to provide written documentation that the person pays property tax in the county if a person chooses to register in the county where the property taxes are paid.

[Acts 1972, ch. 740, § 1; 1973, ch. 327, § 3; T.C.A., § 2-222; Acts 1989, ch. 590, § 11; 1994, ch. 859, § 13; 1994, ch. 919, § 19; 2005, ch. 163, §§ 1, 2; 2008, ch. 939, § 1.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been

changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 2005 amendment, in (a), added the proviso at the end of (1), and added "; however, a commercial address may not be used for residential purposes, unless the applicant provides evidence of such applicant's residential use of such address;" at the end of (a)(6).

The 2008 amendment added (d).

Effective Dates. Acts 2005, ch. 163, § 6. July 1, 2005.

Acts 2008, ch. 939, § 2. May 19, 2008.

Section to Section References. This section is referred to in § 2-1-104.

Law Reviews.

The Origins and Constitutionality of State Unit Voting in the Electoral College, 54 Vand. L. Rev. 2099 (2001).

Cited: Tate v. Collins, 622 F. Supp. 1409 (W.D. Tenn. 1985).

NOTES TO DECISIONS

2. Relation to Other Laws.

2. Relation to Other Laws.

Fact that Chapter 7 debtors had changed their county for voting by claiming a residence in property that they used a few days every week and upon which they intended to retire did not by itself make that property their principal residence for a homestead exemption under T.C.A. § 26-2-301 when the debtors made the voting registration change three days before filing for bankruptcy, and the debtors continued to own and reside on another property that they had purchased 35 years before. In re Dilbeck, — B.R. —, 2008 Bankr. LEXIS 878 (Bankr. E.D. Tenn. Mar. 28, 2008).

Decisions Under Prior Law

1. Constitutionality.

1. Constitutionality.

Tennessee's durational residency requirements were repugnant to the constitution of the United States and therefore were null, void and of no effect. Blumstein v. Ellington, 337 F. Supp. 323, 1970 U.S. Dist. LEXIS 10417 (M.D. Tenn. 1970), aff'd, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274, 1972 U.S. LEXIS 75 (1972).

Collateral References.

Residence, validity of requirement that candidate or public officer has been resident of governmental unit for specific period. 65 A.L.R.3d 1048.

Registration of voters <key> 144.95-119.

2-1-112. Restrictions on commission or board membership or service as election official.

(a) (1) Neither an elected official nor an employee of a state, county, municipal or federal governmental body or agency or of an elected official may serve as a member of a county election commission or as a member of a county primary board or as an election official. No candidate in an election may act in connection with that election as a member of any board or commission established under this title or as an election official.

(2) No member of a county election commission who is appointed to the commission after January 1, 2009, shall be the campaign manager or treasurer of any candidate's political campaign in a local, state or federal election during the commissioner's term of office. A violation of this subdivision (a)(2) subjects the member to immediate removal from office by a majority vote of the state election commission. Nothing in this subdivision (a)(2) shall be construed to prohibit a member of the county election commission from providing uncompensated advice on a one-on-one basis to a candidate or party officer, nor shall it prohibit providing a financial contribution to a candidate or party organization.

(b) (1) This section does not disqualify any person who is within its terms solely because the person is a notary public, an employee, faculty member or instructor at an institution of higher education, a school teacher, or a member of a reserve unit of the United States army, air force, marine corps or navy, or a member of the national guard unless the person is a full-time employee or member of such reserve unit or the national guard, or unless the person is on active duty.

(2) This section does not disqualify any employee of a county or city school system who does not work directly under the supervision of an elected official.

(3) This section does not disqualify any person from service as an officer of elections, judge, machine operator, assistant precinct registrar or inspector because the person is a member of a reserve unit of the United States army, air force, marine corps or navy or the national guard except while the person is on active duty.

[Acts 1972, ch. 740, § 1; 1978, ch. 538, § 1; 1979, ch. 304, § 1; T.C.A., § 2-112; Acts 1981, ch. 106, § 1; 1984, ch. 664, § 1; 2005, ch. 163, § 5; 2008, ch. 1051, § 1.]

Amendments. The 2005 amendment deleted "from serving only on election day as an election official" at the end of (b)(2).

The 2008 amendment, effective January 1, 2009, added (a)(2).

Effective Dates. Acts 2005, ch. 163, § 6. July 1, 2005.

Acts 2008, ch. 1051, § 3. January 1, 2009.

Cross-References. Qualifications of commissioners, § 2-12-102.

State election commissioners prohibited from serving as political candidate's campaign manager or treasurer, § 2-11-111.

Attorney General Opinions. T.C.A. § 2-1-112(a) would not prohibit a city or county elected official from serving on the state election commission, OAG 02-117 (10/22/02).

T.C.A. § 2-1-112(a) prohibits a candidate for election or reelection to a county or city office or for election to any other state or local office from serving as a member of the state election commission, OAG 02-117 (10/22/02).

A member of the county election commission may not serve as a member of the county civil service board, OAG 02-121 (10/30/02).

A quo warranto action appears to be the proper vehicle for challenging the qualifications of an individual prohibited from serving by T.C.A. § 2-1-112, OAG 05-049 (4/19/05).

In light of T.C.A. § 2-1-112, an individual who works for county school board in an administrative, non-teacher capacity may not serve on a county election commission, OAG 05-049 (4/19/05).

Constitutionality of restriction on political activity of election commissioners, OAG 07-023 (3/1/07).

Collateral References. Appointment, qualification and tenure of officers <key> 144.50-52.

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

2008 Tenn. AG LEXIS 253

Opinion No. 08-177

November 20, 2008

Request By:

Honorable Ron Ramsey
Lieutenant Governor
One Legislative Plaza
Nashville, Tennessee 37243

Question: May the same individual simultaneously hold the offices of constable and county commissioner?

OPINION

Under Tenn. Code Ann. § 2-5-101(f)(5), the same individual may not run for the offices of county commissioner and constable in the same election. But neither this statute nor Tenn. Code Ann. § 5-5-102(c)(2) prohibits a constable from being nominated for or elected to membership in the county legislative body at some other time. In counties, however, where the county commission may abolish the office of constable under Tenn. Code Ann. § 8-10-101(a)(3)(A), we think a court would conclude that the offices of county commissioner and constable are incompatible under the common law. Similarly, we think a court would conclude that, in counties where the county commission may remove constables' law enforcement powers under Tenn. Code Ann. § 8-10-109(b)(1), the offices of county commissioner and constable with law enforcement powers are incompatible under the common law.

Opinion

Opinion by: ROBERT E. COOPER, JR., Attorney General and Reporter; MICHAEL E. MOORE, Solicitor General; ANN LOUISE VIX, Senior Counsel

ANALYSIS

This opinion addresses whether the same individual may simultaneously hold the offices of constable and county commissioner. The Tennessee Constitution, Article II, Section 26, prohibits a person from "hold[ing] more than one lucrative office at the same time." The term "office" has been construed by Tennessee courts to mean "state office." *Phillips v. West*, 187 Tenn. 57, 65-66, 213 S.W.2d 3 (Tenn. 1948); *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (Tenn. 1931). The offices of county commissioner and constable are local offices and, therefore, are not covered by the prohibition of Article II, Section 26. Nor does any other constitutional provision prohibit the same individual from simultaneously holding both offices.

Tenn. Code Ann. § 2-5-101(f)(5) provides:

No candidate, whether independent or represented by a political party, may be permitted to submit and have accepted by any election commission, more than one (1) qualifying petition, or otherwise qualify and be nominated, or have such candidate's name anywhere appear on any ballot for any election or primary, wherein such candidate is attempting to be qualified for and nominated or elected to . . . more than one (1) constitutional county office described in article VII, § 1 of the Constitution of Tennessee or any other county-wide office, voted on by voters during any primary or general election.

Our **Office** has concluded that the **office** of constable is a "county-wide **office**, voted on by voters during any primary or general election" within the meaning of Tenn. Code Ann. § 2-5-101(f)(5) . Op. Tenn. Att'y Gen. 02-012 (January 18, 2002). Article VII, Section 1, of the Tennessee Constitution provides in relevant part:

The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property.

Thus, the **office** of county commissioner is a constitutional county **office** described in Article VII, Section 1, of the Tennessee Constitution. The same individual, therefore, may not run for the offices of county commissioner and constable in the same election.

The request cites Tenn. Code Ann. § 5-5-102(c)(2) . That statute provides in relevant part:

No person elected or appointed to fill the **office** of county mayor, sheriff, trustee, register, county clerk, assessor of property, or any other county-wide **office** filled by vote of the people or the county legislative body, shall also be nominated for or elected to membership in the county legislative body.

Our **Office** has concluded that the term "any other county-wide **office** filled by vote of the people or the county legislative body" does not include county offices that are not filled by a county-wide vote. Op. Tenn. Att'y Gen. 01-084 (May 23, 2001). This conclusion was based on the language of this statute, which specifically lists only offices filled by a county-wide vote. The **office** of constable is not filled by a county-wide vote. Tenn. Code Ann. § 8-10-101 . Tenn. Code Ann. § 5-5-102(c)(2) , therefore, does not prohibit a constable from being nominated for or elected to membership in the county legislative body.

In addition to constitutional and statutory provisions regarding dual **office**-holding, there is a **common law** prohibition against a public officer's holding two **incompatible** offices at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 89 S.W. 316 (1905). The question of incompatibility depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other. 67 C.J.S. *Officers* § 38 (2008). Tennessee courts have recognized that an inherent inconsistency exists where one **office** is subject to the supervision or control of the other. *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952). In *Thompson*, the Tennessee Supreme Court concluded that the offices of city manager and member of the city council were **incompatible** because the council had the authority to appoint, remove, and supervise the city manager, and no statute then in effect permitted the same individual to **hold** these offices. The Court found, therefore, that the **common law** principle of **incompatible** offices prohibited the same individual from acting as city manager and city council member.

Of course, only a Tennessee court can make a binding determination on whether two offices are **incompatible**. Op. Tenn. Att'y Gen. 08-129 (August 8, 2008). No Tennessee case addresses whether the offices of county commissioner and constable are **incompatible**. A constable is an independently elected official. While the county commission does not ordinarily exercise day-to-day control over a constable, the county commission in many counties may abolish or change the term of **office** for a constable. Tenn. Code Ann. § 8-10-101(a)(3)(A) provides:

Notwithstanding any other provision of law to the contrary, a county legislative body may, by adopting a resolution by two-thirds (2/3) vote at two (2) consecutive meetings of the county legislative body, abolish the **office** of constable for that county or set the term of **office** for the constable at either two (2) or four (4) years. Any change would not be effective until the end of the current term being served by the constable.

Subsection (a)(3)(B) of the statute excludes counties in seven population brackets from the

application of this statute. We think a court would conclude that, in counties where the county commission may abolish the office of constable under Tenn. Code Ann. § 8-10-101(a)(3)(A), the offices of county commissioner and constable are incompatible under the common law. Similarly, under Tenn. Code Ann. § 8-10-109(b)(1) :

Notwithstanding any other provision of law to the contrary, a county legislative body may, by adopting a resolution by a two-thirds (2/3) vote at two (2) consecutive meetings of the county legislative body, remove any law enforcement powers exercised by the constables of the county.

Subsection (b)(2) of the statute excludes counties in seven population brackets from the application of this statute. We think a court would conclude that, in counties where the county commission may remove constables' law enforcement powers under Tenn. Code Ann. § 8-10-109(b)(1), the offices of county commissioner and constable with law enforcement powers are incompatible under the common law.

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE
2007 Tenn. AG LEXIS 145
Opinion No. 07-145
October 12, 2007

Request By:

Honorable John Mark Windle
State Representative
108 War Memorial Building
Nashville, TN 37243-0141

Question:

May an individual serve simultaneously as City Judge and City Attorney for the Town of Livingston?

OPINION

No. The offices of Livingston City Judge and Livingston City Attorney are incompatible under the common law.

Opinion

Opinion by:

ROBERT E. COOPER, JR., Attorney General and Reporter; MICHAEL E. MOORE, Solicitor General; LAURA T. KIDWELL, Assistant Attorney General

ANALYSIS

This opinion concerns whether the Livingston City Judge may also serve as the Livingston City Attorney. Livingston is an incorporated municipality under a mayor-aldermanic charter. 1907 Tenn.Priv.Acts ch. 130. Livingston's charter provides for the appointment of a City Attorney and a Recorder. Specifically, Section 5(21) of Livingston's charter gives the Mayor and Aldermen the power:

To appoint a City Marshall, with sufficient police force; a Health Officer; a City Attorney; a Recorder, who shall be ex-officio Treasurer; a Building Inspector; a Street Superintendent; and all such other officers and [sic] agents as the necessities of the corporation may require and as the Board of Aldermen shall determine are needed, and fix and declare their pay and compensation; Provided, that the City Attorney and Recorder shall be compensated for their services by fees and commissions on taxes and other revenue, to be fixed by the Board of Mayor and Aldermen, and such fees to be collected in each case from the defendant in all cases where the defendant is found guilty, but in no case shall the town be [sic] liable for any such fees.

With respect to Recorder, Section 7 of Livingston's charter provides as follows:

[T]he Board of Aldermen shall have power and authority, in the event the Mayor shall decline in writing to perform the duties thereof, to elect and appoint a Recorder, who shall be invested with the powers of a Justice of the Peace, and hold his office for two years, and until his successor shall be elected and qualified. He shall have jurisdiction in all cases for violations of the criminal laws of the State, as other Justices of the Peace, and shall have jurisdiction over and shall hear and determine all breaches of the law and violations of the ordinances of the town, and be empowered to impose fines and costs in all cases of violations of the ordinances of the town, whether the defendant plead guilty or not guilty, and preserve and enforce order in his court as other Justices of the Peace may now do. The Recorder shall take the oath of office as prescribed

for Justices of the Peace before entering the duties of his office. The Recorder, if not the Mayor, may be an Aldermen [Alderman], a Justice of the Peace, or other person the Aldermen may elect. All fines imposed by the Recorder for violations of the ordinances of the town shall be paid into the town treasury, to be appropriated in such manner and for such purposes as the Board of Mayor and Aldermen may determine. Appeal shall lie from the judgments of the Recorder as are now allowed by law from Justices of the Peace.

Consistent with this charter provision, Chapter 6 of Livingston's municipal code provides for a city court, and Section 1-601 of that chapter provides that "[t]he officer designated by the municipal charter to handle judicial matters within the municipality shall preside over the city court, and shall be known as the city judge."

In considering whether the Livingston Recorder (or City Judge) may serve simultaneously as the Livingston City Attorney, we first consider whether Article VI, Section 7, of the Tennessee Constitution applies. This constitutional provision prohibits certain judges from holding any other office of trust or profit. Article VI, Section 7, provides:

Compensation of judges.-- The Judges of the Supreme or Inferior Courts, shall, at stated times, receive a compensation for their services, to be ascertained by law, which shall not be increased or diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office nor hold any other office of trust or profit under this State or the United States.

By its express language, Article VI, Section 7, applies only to judges of "the Supreme or Inferior Courts." Municipal courts that exercise purely municipal authority are neither supreme nor inferior courts. See *Newsom v. Biggers*, 911 S.W.2d 715, 717 (Tenn. 1995); *Town of South Carthage v. Barrett*, 840 S.W.2d 895, 897-98 (Tenn. 1992); *Summers v. Thompson*, 764 S.W.2d 182, 184 (Tenn. 1988). However, the Tennessee Supreme Court has found that the judge of a municipal court is subject to the requirements of Article VI when that judge exercises concurrent jurisdiction with an inferior court. See *Summers*, 764 S.W.2d at 185-86; see, e.g., *Barrett*, 840 S.W.2d at 899 (statute bestowing appointed recorder of municipality with concurrent jurisdiction with judges of the court of general sessions was found unconstitutional because Article VI, Section 4, of Tennessee Constitution requires judges exercising inferior court jurisdiction to be elected).

Section 7 of Livingston's charter initially invests its Recorder with the powers of a justice of the peace, and then goes on to more particularly state:

[The Recorder] shall have jurisdiction in all cases for violations of the criminal laws of the State, as other Justices of the Peace, and shall have jurisdiction over and shall hear and determine all breaches of the law and violations of the ordinances of the town, and be empowered to impose fines and costs in all cases of violations of the ordinances of the town, whether the defendant plead guilty or not guilty, and preserve and enforce order in his court as other Justices of the Peace may now do.

Livingston's charter primarily bestows the Recorder with jurisdiction to hear and determine matters involving municipal law and ordinances. This is clearly municipal court authority. The charter, however, also provides that the Recorder shall have jurisdiction in all cases for violations of the criminal law of the State. This type of jurisdiction is exercised by an inferior court. See *Newsom*, 911 S.W.2d at 717. Nevertheless, Livingston's charter expressly limits this grant of jurisdiction to only such jurisdiction "as other Justices of the Peace" have. In *City of Elizabethton v. Carter County*, 321 S.W.2d 822 (Tenn. 1958), the Tennessee Supreme Court examined a very similar charter provision. Elizabethton's charter provided that its municipal court "shall be vested with the power, authority, and jurisdiction of the office of the Justice of the Peace, as to the violation of the criminal laws of the State of Tennessee within the corporate limits of the City of Elizabethton." *City of Elizabethton*, 321 S.W.2d at 824. The Court determined that the City of Elizabethton municipal court judge exercised the limited

power of a justice of the peace and was consequently not exercising inferior court jurisdiction. *Id.* at 827-28.

Notably, the Tennessee Supreme Court has continued to recognize the distinction between inferior courts and justices of the peace. Over thirty years after it rendered its opinion in *City of Elizabethton*, the Court distinguished that opinion in *Barrett*, expressly noting that *City of Elizabethton* dealt with the conferring of a limited power of a justice of the peace upon a city judge or recorder, rather than inferior court jurisdiction.² *Barrett*, 840 S.W.2d at 898. Accordingly, it does not appear that Article VI, Section 7, which prohibits judges of "the Supreme or Inferior Courts" from holding any other office of trust or profit, applies to the Livingston Recorder because Livingston's charter bestows only the limited power of a justice of the peace upon its Recorder. See *City of Elizabethton*, 321 S.W.2d at 824, 827-28. Consequently, we do not believe that Article VI, Section 7, prohibits the Livingston Recorder (or City Judge) from serving simultaneously as City Attorney; however, this does not end the inquiry.

While Article VI, Section 7, does not appear to prohibit the Livingston Recorder from serving simultaneously as City Attorney, we are of the opinion that these two positions are incompatible under the common law. There is a well recognized common law prohibition against a public officer holding two incompatible offices at the same time. *State ex rel. Little v. Slagle*, 115 Tenn. 336, 327, 89 S.W. 316 (1905) (citing *State ex rel. Bergshicher v. Grace*, 113 Tenn. 9, 82 S.W. 485 (1904)). As explained below, the Livingston City Attorney and the Livingston Recorder are public officers, and their offices are incompatible.

In *Frazier v. Elmore*, 180 Tenn. 232, 173 S.W.2d 563 (1943), the Tennessee Supreme Court examined the meaning of "office," stating:

Webster defines "office" as an "assigned duty or function." Synonyms are post, appointment, situation, place, position; and "office" commonly suggests a position of (especially public) trust or authority." Bouvier defines "office" as "a right to exercise a public function or employment, and to take the fees and emoluments belonging to it"; again, "a public charge or employment." 2 Bouv. Law Dict., Rawles Third Revision, p. 2401. The opinion of this Court in *Jones, Purvis & Co. v. Hobbs*, 63 Tenn. 113, at page 120, quotes Blackstone's definition of office as "a right to exercise a public or private employment, and to take the fees and emoluments thereto belonging."

Frazier, 180 Tenn. 232, 173 S.W.2d at 565. Similarly, a "public officer" has been broadly defined as "an incumbent of a public office; an individual who has been appointed or elected in a manner prescribed by law, who has a designation or title given to him by law, and who exercises the functions concerning the public assigned to him by law." *Sitton v. Fulton*, 566 S.W.2d 887, 889 (Tenn. Ct. App. 1978) (citing 67 C.J.S. *Officers*, § 2).

Under these broad definitions, it is our opinion that the Livingston City Attorney and Recorder are "offices" and that the individuals holding those positions are "officers." Additionally, we note that Tennessee courts have found city attorneys and city recorders to be officers, especially when a municipal charter provides for their appointment or election. See, e.g., *Gamblin v. Town of Bruceton*, 803 S.W.2d 690, 692-93 (Tenn. Ct. App. 1990) (city recorder); *Sitton*, 566 S.W.2d at 889 (city attorney).

Assuming the Livingston City Attorney and Livingston Recorder are offices, we next examine the compatibility of these two offices. The common law prohibition against a public officer holding two incompatible offices at the same time generally applies when an individual occupies two inherently inconsistent offices. 63C Am.Jur.2d *Public Officers and Employees* § 62 (2007). The question of incompatibility of necessity depends on the circumstances of the individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether performance of the duties of one interferes with the performance of those of the other. 67 C.J.S. *Officers* § 38 (2007).

Incompatibility, therefore, arises from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both. The true test is whether the two offices are incompatible in their natures, in the rights, duties or obligations connected with or flowing from them.

3 *McQuillin Mun. Corp.*, § 12.67 (3rd ed.).

A city attorney represents the city in legal matters in which the city is a party or interested, or in which its officers are officially interested. 56 Am.Jur.2d *Municipal Corporations* § 198 (2007). A city attorney therefore must act as an advocate for the city's interests in court. By contrast, a city judge must act as a neutral arbitrator. This requirement is clearly set forth throughout the Tennessee Code of Judicial Conduct. Rule 10, Canon 2A of the Rules of the Tennessee Supreme Court provides: "A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Under Section 7 of Livingston's charter, the Recorder has jurisdiction over and is to hear and determine all breaches of the law and violations of the ordinances of the town and is empowered to impose fines and costs in all cases of violations of the ordinances of the town. The City Attorney prosecutes these cases on behalf of Livingston. A Livingston City Judge who is also employed as City Attorney could not be a neutral arbitrator when hearing such cases. Thus, the offices of Livingston City Attorney and Recorder are inherently inconsistent and therefore incompatible.

Due to the incompatibility of the offices of city judge and city attorney, we have opined in the past that the same person may not simultaneously hold these offices in other municipalities.³ We are of the same opinion with respect to Livingston. We also note that courts in other jurisdictions have determined that the offices of city judge and city attorney are incompatible. See, e.g., *In re Klaisz*, 115 A.2d 537 (N.J. 1955); *People v Rapsey*, 107 P.2d 388 (Cal. 1940); *State ex rel. Stark v. Hines*, 215 N.W. 447 (Wis. 1927).

Footnotes

Footnotes

1 Section 3 of Livingston's charter provides that "[t]he Mayor shall be ex-officio Recorder, but may decline to perform the duties of Recorder, in which case a Recorder shall be appointed as hereafter provided.

2 Earlier in the opinion, the Court also noted Article VI, Section 1, of the Tennessee Constitution, which distinguishes between judges of inferior courts and justices of the peace. *Barrett*, 840 S.W.2d at 897. Article VI, Section 1, provides:

The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by Justices of the Peace (footnote 2, continued) may also be established.

3 This office has concluded that the same person may not serve as the Collinwood City Judge and the Collinwood City Attorney. Op. Tenn. Att'y Gen. 02-106 (October 1, 2002). Similarly, this office has concluded that the same person may not serve as city attorney and city judge for New Johnsonville. Op. Tenn. Att'y Gen. U97-047 (October 14, 1997).

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF TENNESSEE

1992 Tenn. AG LEXIS 8

92-06

January 24, 1992

Request By:

CHARLES W. BURSON, Attorney General and Reporter (JOHN KNOX WALKUP, Solicitor General; STUART F. WILSON-PATTON, Assistant Attorney General)

Opinion

QUESTION

Whether a Clerk and Master who possesses the qualifications under T.C.A. § 36-5-401(3) may be appointed as a child support referee under the terms and conditions of T.C.A. § 36-5-402 ?

OPINION

No. Although the appointment of a Clerk and Master as a child support referee under T.C.A. § 36-5-402 does not violate either Article II, section 26 or Article VI, section 7, of the Tennessee Constitution, a Clerk and Master is prohibited from holding the office of child support referee. The common law of this State prohibits a single individual from simultaneously holding incompatible offices. The offices of child support referee and Clerk and Master are incompatible in that the child support referee has the right to exercise some supervisory authority over the Clerk and Master.

ANALYSIS

The office of child support referee is a statutory office established by T.C.A. § 36-5-401, *et seq.* There is no specific statutory prohibition against a Clerk and Master serving as a child support referee. The Tennessee Constitution contains two prohibitions on certain officers holding more than one office. Article II, section 26 and Article VI, section 7, Constitution of Tennessee. Neither of these provisions would prohibit a Clerk and Master from simultaneously holding the office of child support referee.

Article II, section 26 of the Tennessee Constitution precludes certain officers from simultaneously holding a seat in the General Assembly and, in addition, provides, "... nor shall any person in this state hold more than one lucrative office at the same time . . ." This quoted clause has, however, been interpreted to mean that an individual is precluded from holding more than one lucrative *state* office. See *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495 (1931) and *Phillips v. West*, 187 Tenn. 57, 213 S.W.2d 3 (1948). See also, *Glasgow v. Fox*, 214 Tenn. 656, 383 S.W.2d 9 (1964).

The office of Clerk and Master is a county rather than a state office. In determining whether court officers are state or county officials, the courts look to a number of factors outlined in *State ex rel. Winstead v. Moody*, 596 S.W.2d 811 (Tenn. 1980). Applying these factors to Clerk and Masters leads this Office to the conclusion that Clerk and Masters should be considered county officers. The primary badge of a state officer is that the state pays the salary. *Moody, supra*, at 813. Although the legislature has set the salaries of Clerk and Masters by statute, their salaries are paid by the counties. T.C.A. § 8-24-101, *et seq.* In addition, the overall duties of a Clerk and Master are applicable to the people of the county alone. Thus, Article II, section 26 of the Tennessee Constitution does not forbid an individual from holding a state and a county office; it simply forbids an individual from serving simultaneously in two state offices. Since the office of Clerk and Master is clearly not a state office,

Article II, section 26 would not prohibit the same individual from simultaneously serving as Clerk and Master and as child support referee.

The other constitutional provision which prohibits holding two state offices is Article VI, section 7 of the Constitution of Tennessee. That provision prohibits judges of the Supreme and Inferior Courts from holding "... any other office of trust or profit." This constitutional provision would also not prohibit the same individual from simultaneously serving as Clerk and Master and as child support referee, because the child support referee is not a judge of an inferior court within the meaning of the Constitution. A child support referee is appointed by the presiding judge of his or judicial district and given authority to set and enforce child support, and to administer expedited process as set forth in T.C.A. § 36-5-401, *et seq.* Although the child support referee has the same authority and power as a circuit court judge to issue process and to conduct child support hearings, a child support referee is not a judge within the meaning of Article VI, section 7 of the Tennessee Constitution. T.C.A. § 36-5-403.

This Office has previously opined that a juvenile court referee is not a judge within the meaning of either Article II, section 26 or Article VI, section 7 of the Tennessee Constitution. See, 84 Op. Tenn. Att'y Gen. 268 (copy attached). As we stated therein:

[a] juvenile court referee is not a judge. The referee's findings and recommendations become the decree of the court only upon confirmation by the judge. T.C.A. § 37-1-107(f). Therefore, the first clause of Article II, section 26 does not apply to a juvenile court referee. Similarly, Article VI, section 7 which prohibits a judge from holding any other office of trust or profit under the state, has no application to a juvenile court referee.

Likewise, the child support referee's findings and recommendations become the decree of the court only upon confirmation by the judge. T.C.A. §§ 36-5-403 and 405(i). Further, the federal regulations implementing the federal child support enforcement amendments of 1984 (P.L. 98-378), define expedited processes to mean either administrative or expedited judicial processes "under which the presiding officer is not a judge of the court." 45 C.F.R. § 303.101 (1990). Thus, the implementing regulations of the federal law which imposed the child support referee program indicate that child support referees are not judges. Therefore, a child support referee cannot be a judge within the meaning of Article VI, section 7 of the Tennessee Constitution.

Although there is no constitutional prohibition upon a Clerk and Master simultaneously holding the position of child support referee, the holding of both offices is incompatible under the common law. There is a well recognized common law prohibition against a public officer holding two incompatible offices at the same time. See, *State ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W.2d 59 (1952); *State ex rel. Little v. Slagle*, 115 Tenn. 336, 89 S.W. 326 (1905). Generally, incompatibility involves one office supervising or directly affecting the other, so that the individual would be supervising or participate in supervising himself. *State ex rel. v. Thompson, supra*.

There are several situations in which this incompatibility becomes apparent. The expedited process for support statutes clearly contemplate that the offices of court clerk and child support referee will be held by separate individuals. Since the Anderson County Chancery Court is vested with divorce jurisdiction, the Clerk and Master would in this case be the clerk of court referred to by these statutes. T.C.A. §§ 36-5-404 and 405. The mechanics of these statutes cause the common law conflict of interest. The most obvious problem is caused by T.C.A. § 36-5-404. That statute requires the Anderson County Clerk and Master not only to provide a sufficient supply of forms to be used in expedited process for support proceedings, but also to "assist a person who is not represented by counsel by filling in the name of the court on the petition and testimony or shall refer the person to the proper IV-D agency within the county." [sic] Incompatibility under the common law prohibition would be raised where the same individual who will ultimately make findings and recommendations in a judicial capacity assists an unrepresented party in drafting the pleadings in the very case which he

or she would decide.

A second problem arises from the Clerk and Master's collection of fees in child support cases. The Anderson County Clerk and Master is entitled to charge and receive from a paying spouse or parent the sum of 5% of any and all payments received during each calendar month for his services in so receiving, handling and dispersing any monies collected for spousal support, child support, and other similar monies. T.C.A. § 8-21-403(a) . T.C.A. § 36-5-101(a)(4) requires that all support payments in Title IV-D cases be paid to the clerk of the court. In any cases in which an income assignment order is issued, the child support referee is required to include an amount necessary to cover the fee due the clerk of court under § 8-21-403. T.C.A. § 36-5-501(a)(1) . In cases which are not brought pursuant to Title IV-D of the Social Security Act, the support order may either provide that payments are to be made directly to the spouse or other person awarded custody of the child or paid through the clerk of court. In addition, the Clerk and Master is entitled to the fees collected by the office if the office does not collect enough fees to pay the office expenses, salaries, and the Clerk and Master's minimum statutory salary. T.C.A. § 8-24-103(a) .

The above statutory duties regarding collection of fees are incompatible with the child support referee functions. Both decisions as to the amount of support and whether such support is paid through the clerk of court impact the revenues of the Clerk and Master's office. Such sharing of duties could also render the child support referee no longer a disinterested and impartial judicial officer as required by the due process clause of the fourteenth amendment of the United States Constitution. See *Ward v. Village of Monroeville, Ohio*, 409 U.S. 57, 93 S. Ct. 80, 34 L. Ed. 2d 267 (1972). Thus, it is the opinion of this Office that a Clerk and Master may not simultaneously serve as a child support referee under the terms and conditions of T.C.A. § 36-5-401 , *et seq.* In view of our findings, we have not addressed other potential state statutory restrictions on such an arrangement. See, T.C.A. § 36-5-402(b)(4) and Rule 22, Tennessee Supreme Court Rules. If you have any further questions concerning, this matter, please let us know.

Requested by: Honorable William E. Lantrip, Chancellor, 7th Judicial District, Anderson County Courthouse, Clinton, Tennessee 37716